

In re)
) Decision on
) Petition for Review
) Under 37 C.F.R. § 10.2(c)
)

(“Petitioner”) seeks review of the decision of the Director of the Office of Enrollment and Discipline (“Director”) denying his request for a higher score on the afternoon section of the Patent Practitioner’s Examination (“exam”) held on May 3, 1995. Petitioner also requests a waiver of the fee required by 37 C.F.R. § 10.2(c) and set forth in 37 C.F.R. § 1.21(a)(5). The petition is dismissed for failing to timely file for review. 37 C.F.R. § 10.2(c).

An applicant for registration to practice before the Patent and Trademark Office ("Office") in patent cases must achieve a passing grade of 70 on the afternoon section of the Exam. Petitioner originally scored 44 points on the afternoon section. Responsive to Petitioner's Request for Regrade, 14 points were restored in the decision on Request for Regrade dated December

11, 1995, and Petitioner's score on the afternoon section was raised to 58. Petitioner received a passing grade on the morning section upon regrading and the passing score is duly noted in the December 11, 1995, decision. Petitioner subsequently filed a Request for Reconsideration of the Decision for Regrade of the Afternoon Section of the Examination held on May 3, 1995. Reconsideration of the Decision on Regrade of Petitioner's answers to the afternoon section of the exam resulted in no additional points being added to his score as indicated by the Director's decision dated August 7, 1996.

By petition, dated September 13, 1996, and received on September 18, 1996, Petitioner requests the Commissioner to review and overturn the final decision of the Director pursuant to 37 C.F.R. § 10.2(c) and to waive the required petition fee for this review pursuant to 37 C.F.R. § 10.170.

OPINION

A. Dismissal

The Director's Decision on Request for Reconsideration of Decision on Regrade of the Afternoon Section of the Examination held on May 3, 1996, specifically states, at page 18, that "[a]ny petition to the Commissioner for review of this decision must be

filed pursuant to 35 CFR 10.2(c) within thirty (30) day after the date of this decision." Petitioner's petition is dated in what appears to be his own handwriting as September 13, 1996, more than thirty days after the date of the Director's decision. Petitioner did not request a waiver of the deadline and, in fact, provided no explanation for his failure to timely file his petition. Deadlines are an important part of the practice before the Office and, accordingly, in the absence of any request for a waiver, the petition is dismissed for not being timely made. 37 C.F.R. § 10.2(c)."

Finally, I note that even if his petition was considered on the merits, it would have been unlikely that it would have resulted in any relief. The burden is on the Petitioner to show that his draft claims provided as answers to the afternoon portion of the May 3, 1995, exam included no errors in view of the exam's instructions. In particular, Petitioner presented

* Petitioner also requests a waiver of the petition fee. Had the petition been accepted, his request for waiver of the review fee would have been denied. In particular, Petitioner failed to establish an "extraordinary situation," and failed to provide a statement of facts that could support granting such a waiver on the ground that "justice requires" such a waiver. See 37 C.F.R. § 10.170. Rather than provide specific facts to support his request, Petitioner merely opines that his financial position has deteriorated.

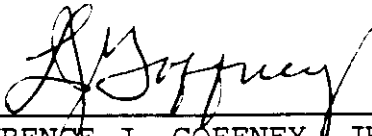
three arguments to support his petition, none of which are directed to the merits of his draft claims or the errors in the grader's deduction of points. Rather than point out and distinctly discuss specific alleged errors in the grading of his exam answers, Petitioner merely summarily argues three points: (1) the grader made an "intentional" error in adding points deducted (albeit the error worked in his favor); (2) the "regrade process did not address [the] entirely flawed grading of the exam;" and (3) his petition for reconsideration was "an exercise in futility."

None of these arguments rise to the level of providing a statement of the facts involved and the points to be reviewed as required by 37 C.F.R. § 10.2(c)(1). Consequently, no error in the grading of his examination was established.

ORDERED

The petition is dismissed.

May 13, 1997
Date



LAWRENCE J. GOFFNEY, JR.
Acting Deputy Assistant
Secretary of Commerce and
Acting Deputy Commissioner of
Patents and Trademarks

CC: